

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201314018**
Release Date: 4/5/2013

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 2632.01-00, 2642.00-00,
9100.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-134494-12

Date:
December 19, 2012

Legend

Donor =

Accountant =

Date 1 =

Year 1 =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Dear :

This letter responds to the letter dated August 1, 2012, submitted by your authorized representatives, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Donor's GST exemption to several trusts.

The facts and representations submitted are summarized as follows: On Date 1, in Year 1, Donor established six irrevocable trusts (Trusts 1– 6). Date 1 is prior to December 31, 2000. Each trust was for the benefit of one of Donor's children and their respective descendants. Donor hired Accountant to prepare Donor's Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Year 1. Accountant prepared the Form 709 but failed to advise Donor to make an election to allocate his GST exemption to any of the Year 1 transfers. Donor represents that no distribution of

income or principal has been made from Trusts 1 through 6 to or for the benefit of a grandchild or more remote descendant of Donor.

Donor requests (1) an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate his available GST exemption to the Year 1 transfers to Trusts 1 through 6, and (2) a ruling that the allocations will be effective as of the date of the transfers to Trusts 1 through 6.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer (GST), which is defined under § 2611(a) as: (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), as in effect in Year 1, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such return is required to be filed.

Section 26.2632-1(b)(2) of the Estate Tax Regulations, as in effect at the time of the transfer, provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(2) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting

comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-1 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocations rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(b)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Donor is granted an extension of time of 120 days from the date of this letter to allocate his available GST exemption to the Year 1 transfers to Trusts 1 through 6. The allocations will be effective as of the date of the transfers to Trusts 1 through 6. The allocations should be made on supplemental Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return. The Forms 709 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service Center – Stop 82, Cincinnati, OH

45999. A copy of this letter should be attached to the supplemental Form 709. A copy of this letter is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy of this letter for § 6110 purposes

cc: